IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1273 of 1984

with

FIRST APPEAL No 1274 of 1984

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PALANPUR NAGAR PALIKA

Versus

KALAVATIBEN WD/O.CHANDRAKANT NARAYANDAS

Appearance:

MS KUSUM M SHAH for Petitioner No. 1

NOTICE NOT RECD BACK for Petitioner No. 1

MR KB PUJARA for Respondent No. 1-4

MR MD PANDYA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. Both these appeals are preferred against the judgement and decree passed by Civil Judge (Senior Division), Palanpur, dated 31st March 1984 in Special Civil Suit No.69 of 1979, whereby the trial court passed a decree against the present appellants for an amount of Rs.76880/- with running interest at the rate of 9% per annum from the date of suit i.e. 1st February 1979 till realisation and also awarded costs of the suit.

2. First Appeal No.1273/1984 is preferred by the Palanpur Nagarpalika, original defendant no.1 and First Appeal No.1274/84 is preferred by the Union of India through Executive Engineer, Post and Telegraph Department-original defendant no.3. For the sake of convenience, the respondent nos.1 to 3 in First Appeal No.1273/1984 and respondent nos.3 to 6 in First Appeal 1274/1984 will be referred to as the original plaintiffs, Palanpur Nagarpalika will be referred to as defendant no.1, Gujarat Electricity Board will be referred to as defendant no.2 and Union of India will be referred to as defendant no.3 in this judgement.

3. The original plaintiffs filed Special Civil Suit No.69 of 1979 in the Court of Civil Judge (Senior Division) for recovery of a sum of Rs.1,14,380/consisting of Rs.1,06,400/- towards compensation and Rs.7980/-towards interest for a period from 2.8.1979 to 2.1.1979 at the rate of 18% per annum. The original plaintiffs sued the defendants for the death of Chandrakant Narayandas due to electrocution on 26th July 1978 at the age of 42. Plaintiff no.1 is the widow, plaintiffs no.1B and 2 are minor daughter and son respectively and plaintiff no.3 is the mother of Chandrakant Narayandas.

4. The defendant no.1 has resisted the suit vide their written statement at Exh.21 and has contended that they are not responsible for the death of deceased Chandrakant. The defendant no.2 filed their written statement vide Exh.32 denying all the allegations made in the plaint and contended that they are not liable to pay any amount by way of compensation. Defendant no.3 has also opposed the suit by filing written statement vide Exh.27. They have denied that the electric wires were touching the telephone wires and denied all other

allegations made in the plaint.

5. The trial court has framed issues at Exh.34, and after considering the evidence of the plaintiff at Exh.44 and Exh.83 and also the evidence of the defendant no.1 at Exh.90, defendant no.2 at Exh.92 and defendant no.3 at Exhs.99 and 105, has come to the conclusion that the death of Chandrakant was caused due to negligence on the part of defendant nos.1 and 3 in not maintaining the electrical wires and telephone wires properly. The trial court, therefore, partly decreed the suit and awarded a sum of Rs.76,880/- together with interest at the rate of 9% per annum from the date of the suit till realisation.

6. We have heard the learned counsel for the respective parties and have also perused the impugned judgement and the oral and documentary evidence on record. The defence put forward by the defendant no.1 regarding plastic pipeline between the house of deceased Chandrakant and upper story of the house of Panchand was not believed. The trial court has found that the defendant no.2 is not in any way responsible or in any way liable for the damages for the accidental death of deceased Chandrakant. The trial court has recorded that the telephone lines were laid near the house of the plaintiffs by P & T Department in such a manner that the telephone lines were passing below the electrical lines and electricity was being supplied by the defendant no.1 to the consumers in such a manner that the electric wires touched the telephone wires in this area. Ultimately, after appreciating the evidence on record, the trial court found that the death of Chandrakant was caused by electrocution due to negligence on the part of defendant nos.1 and 3. Learned counsel for the appellants were not in a position to assail the finding of the trial court.

7. As regards the quantum part is concerned, the trial court has considered only Rs.350/- as monthly income of the deceased and deducted Rs.50/- by way of the personal expenses of the deceased, and has applied multiplier of 18. The trial court has also awarded Rs.4500/-, Rs.4000/- and Rs.1000/- to plaintiff nos.1 to 3 by way of general damages for pain and suffering on account of death of deceased Chandrakant. A sum of Rs.500/- was awarded towards medical expenses for seven days. Learned Advocates for the appellants could not point out any infirmity either in the assessment of monthly income of the deceased or the multiplier applied by the trial court or the amount awarded on other heads. In our opinion, the judgement of the trial court is just and proper and nothing has been pointed out by the

learned counsel for the appellants to show that the amount awarded by the trial court is so exorbitant as to call for interference by this Court.

8. In view of the above, we are in general agreement with the appreciation of the oral and documentary evidence on record on the part of the trial court, the conclusions drawn therefrom and the findings of fact recorded. We are, therefore, not inclined to interfere in the present appeals and the same are, therefore, dismissed. No order as to costs.

[KSHITIJ R. VYAS, J.]

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[K.S. JHAVERI, J.]

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